



DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony with the Results of the Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 20, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *NTSF Seafoods Joint Stock Company and Vinh Quang Fisheries Corporation v. United States*, Court No. 19-00063, sustaining the Department of Commerce (Commerce)'s remand results pertaining to the administrative review of the antidumping duty (AD) order on certain frozen fish fillets from the Socialist Republic of Vietnam covering the period August 1, 2016, through July 31, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margins assigned to NTSF Seafoods Joint Stock Company (NTSF) and Vinh Quang Fisheries Corporation (Vinh Quang).

DATES: Applicable September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2243.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 2019, Commerce published its *Final Results*.¹ In the *Final Results*, Commerce denied NTSF's reported fish meal and fish oil by-product offsets based on NTSF's statements that it "sold" the head and bone product (*i.e.*, the inputs to fish meal/oil) to an unaffiliated processor. Given these statements, Commerce concluded that the downstream fish meal/oil products were not produced and sold by NTSF, and, therefore, not eligible for by-product offsets.² As a result, Commerce only granted a by-product offset for the fish head and bone product sold by NTSF, and not the downstream fish oil and fish meal produced by the unaffiliated processor.³

On December 21, 2020, the CIT issued its *Remand Order*.⁴ The *Remand Order* addressed whether three aspects of the *Final Results* were supported by substantial evidence: (1) Commerce's selection of financial statements for its calculation of surrogate financial ratios; (2) Commerce's calculation of surrogate values for NTSF's fingerlings; and (3) Commerce's denial of by-product offsets for fish meal and fish oil. The CIT affirmed Commerce's *Final Results* with respect to issues 1 and 2. With respect to issue 3, the CIT concluded that Commerce's denial of by-product offsets for fish meal and fish oil was unsupported by substantial evidence and, thus, remanded the decision to Commerce to explain its analysis of the record evidence cited by NTSF or otherwise change its determination.⁵

In its Final Remand Redetermination, issued in March 2021, Commerce found that NTSF's fish meal and fish oil by-products were produced pursuant to a tolling arrangement with an unaffiliated processor and determined that NTSF later sold the by-products to unaffiliated

¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016–2017*, 84 FR 18007 (April 29, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See *Final Results* IDM at Comment 11.

³ *Id.*

⁴ See *NTSF Seafoods Joint Stock Company and Vinh Quang Fisheries Corporation v. United States*, Court No. 19-00063, Slip Op. 20-180 (CIT December 21, 2020) (*Remand Order*).

⁵ *Id.*

purchasers.⁶ Commerce, thus, found that by-product offsets for NTSF’s sales of fish meal and fish oil were warranted and, accordingly, made changes to the margin calculations for NTSF.⁷

Commerce also made changes to the rate assigned to a reviewed company that it did not individually examine, but which demonstrated its eligibility for separate rate and is a party to the litigation, *i.e.*, Vinh Quang.⁸

On September 20, 2021, the CIT sustained Commerce’s Final Remand Redetermination.⁹

Timken Notice

In its decision in *Timken*,¹⁰ as clarified by *Diamond Sawblades*,¹¹ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 20, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending the *Final Results* with respect to NTSF and Vinh Quang as follows:¹²

Producer/Exporter	Weighted-Average Dumping Margin (Dollars/Kilogram)
NTSF Seafoods Joint Stock Company	1.28
Vinh Quang Fisheries Corporation	1.28

⁶ See Final Results of Redetermination Pursuant to Court Remand, *NTSF Seafoods Joint Stock Company and Vinh Quang Fisheries Corporation v. United States*, Court No. 19-00063, Slip Op. 20-180 (CIT December 21, 2020), dated March 22, 2021 (Final Remand Redetermination).

⁷ *Id.*

⁸ *Id.*

⁹ See *NTSF Seafoods Joint Stock Company and Vinh Quang Fisheries Corporation v. United States*, Court No. 19-00063, Slip Op. 21-121, dated September 20, 2021.

¹⁰ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹¹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹² See Final Remand Redetermination at 16-17.

Cash Deposit Requirements

Because NTSF has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate NTSF. For Vinh Quang, which does not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to CBP.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by the CIT order from liquidating entries that: were exported by NTSF and Vinh Quang and were entered, or withdrawn from warehouse, for consumption during the period August 1, 2016, through July 31, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event that the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise exported by NTSF and Vinh Quang in accordance with 19 CFR 351.212(b). We will instruct CBP to apply the per unit assessment rates listed above to all entries of subject merchandise during the period of review which were exported by NTSF and Vinh Quang.

For NTSF, we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis*,¹³ we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries of subject merchandise during the period of review produced by NTSF for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the Vietnam-wide rate if there is no rate for the intermediate company(ies) involved in the transaction.

¹³ See 19 CFR 351.106(c)(2).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

Dated: September 27, 2021.

Christian Marsh,
Acting Assistant Secretary for Enforcement and Compliance.

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